

No. 15416

United States
Court of Appeals
for the Ninth Circuit

VICTOR MANUEL GIL, Appellant,

vs.

ALBERT DEL GUERCIO, as District Director
of the Immigration and Naturalization Service
at Los Angeles, California, Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division

FILED

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PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the United States District Court for the Southern District of California, Central Division

No. 19655-T

VICTOR MANUEL GIL, Plaintiff,

vs.

GORDON CORNELL, JOHN DOE and JANE DOE, Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION

Comes now the plaintiff Victor Manuel Gil and for cause of action against the defendants, and each of them, complains and alleges:

I.

That he is now and has been for more than two years last past a resident of the County of Los Angeles and that same is situate in the area of jurisdiction of above described court.

II.

That this court has jurisdiction of the above described matter by virtue of the provisions of the Administrative Procedure Act, Sec. 10, of 1946, commonly known as the A.P.A., 60 Stat. 243; Title 5, United States Code, Section 1009.

III.

That the defendant Gordon Cornell is the duly appointed Officer in Charge of the Los Angeles of-

fice of the Immigration and Naturalization Service of the United States and is under the supervision and direction of the Attorney General of the United States and the Commissioner of Immigration and Naturalization, as well as the District Director for this District, said District Director having headquarters at San Francisco, California; that said defendant Gordon Cornell, as office in charge of the Los Angeles office, is charged with the administration and execution within said area of the above district of the orders of the Immigration and Naturalization Service and the immigration laws of the United States.

IV.

That plaintiff is informed and believes and upon said ground alleges that defendants John Doe and Jane Doe are Acting Officers in Charge of the Los Angeles office of the agency heretofore named with the same rights, duties and responsibilities as the Officer in Charge, as alleged above.

V.

The plaintiff does not know the true name or names of those defendants sued under the fictitious names of John Doe and Jane Doe and asks leave of Court to amend showing the true name of each when same shall be ascertained.

VI.

That on or about the 11th day of March, 1955, an order was made and entered for the Office in Charge of the Los Angeles office of the United States Immigration and Naturalization Service for

the deportation of the plaintiff from the United States to Mexico. Plaintiff is informed and believes that said Order has never been cancelled or rescinded or vacated.

VII.

Plaintiff alleges that he has exhausted all administrative remedies.

VIII.

Plaintiff contends that by virtue of the entry of said Order of Deportation he is about to be taken into custody for deportation and deprived of his liberty unlawfully, all in violation of due process of law and the Fifth Amendment to the Constitution of the United States, for reasons as hereinafter more fully set forth.

IX.

Plaintiff entered the United States at San Ysidro, California on or about November 25, 1953, and has been a resident of the United States since that date.

X.

Plaintiff reads and writes Spanish, but neither is able to speak, read or write in the English language, Spanish being his native tongue.

XI.

Plaintiff is a person of good moral character and has never been arrested, traffic citations excepted, save and except by the aforesaid agency. That he is steadily employed and has never asked for or received assistance from any organization, governmental or otherwise.

XII.

That on or about the 27th day of January, 1955, a warrant of arrest was served upon the plaintiff by said agency and he is now, and since date of service of warrant, been at liberty under bond as requested and furnished.

XIII.

That the entry of the order, as aforesaid, was predicated upon an order of deportation made on March 11, 1955, at an administrative hearing on said date, as aforesaid.

XIV.

That the order of March 11, 1955, as aforesaid, was not based upon reasonable, reliable, probative and/or substantial evidence.

XV.

That the said order of deportation was arbitrary, capricious and a denial of due process of law and the rules and regulations of the immigration service.

XVI.

That the Immigration and Naturalization Service, by and through its office in charge of the Los Angeles office, has entered the order of deportation and denied voluntary departure based upon unreasonable, unsubstantial and unreliable evidence and in direct violation of due process of law and the Fifth Amendment of the Constitution of the United States. By reason of the foregoing there is an actual controversy existing between the parties hereto with respect to the validity of said Order

of Deportation and its entry and with respect to the enforcement thereof against the plaintiff by the defendants, or either of them, or anyone acting under their control or direction.

XVII.

Plaintiff is informed and believes and upon the basis of said information and belief alleges that unless restrained by the Order of this Court, the defendant Gordon Cornell, and/or defendants John Doe or Jane Doe, by and through his/their agents and employees intends to and will take plaintiff into custody under color of said Order of Deportation, entered as aforesaid, and will deprive him of his liberty and the opportunity to earn his livelihood, to his irreparable damage and will continue to act without authorization in law and threatens to and will deprive him of his liberty without recourse.

XVIII.

Plaintiff seeks (1) a Declaratory Judgment that the Order of Deportation of March 11, 1955, is void and without force and effect and, (2) an injunction restraining defendants, or any of them, from proceeding against the plaintiff under said Order, pending the determination of the validity of said Order, and permanent injunction if said Order is declared void.

XIX.

Plaintiff is without a plain, speedy or adequate remedy at law to prevent or redress such irreparable damage and injury as will result from *her* summary removal from the United States.

Wherefore, Plaintiff Prays For The Following Judgment:

1. That the Order of Deportation be declared illegal and void and without force and effect.
2. That an order be issued permanently enjoining and restraining defendants, and each of them, from deporting the plaintiff.
3. Such other relief as is proper.

/s/ JOHN P. TOBIN

Attorney for Plaintiff.

Duly Verified.

[Endorsed]: Filed March 13, 1956.

[Title of District Court and Cause.]

ORDER DENYING PRELIMINARY INJUNCTION AND DISCHARGING ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

Plaintiff's Order to Show Cause having come on for hearing in the above-entitled action before the Honorable William M. Byrne, United States District Judge, on the 26th day of March, 1956, at 9:45 o'clock a.m., a Return to the Order to Show Cause having been filed, and the Court being fully advised,

Now, therefore, it is hereby ordered, adjudged and decreed that the request for preliminary injunction is hereby denied and the temporary re-

straining order and order to show cause be and the same are hereby discharged.

Dated: This 4th day of April, 1956.

/s/ WM. M. BRYNE,
United States District Judge

Affidavit of Service by Mail Attached.

[Endorsed]: Docketed and Entered April 4, 1956.
Filed April 4, 1956.

[Title of District Court and Cause.]

ANSWER

Comes now the defendant, Gordon Cornell, by and through the undersigned, and in answer to the Complaint for Declaratory Judgment and Injunction on file herein, admits, denies, and alleges as follows:

I.

Admits the allegations contained in Paragraphs I and III of the Complaint.

II.

Answering Paragraph VI of the Complaint, admits that an order of deportation of the plaintiff was entered on March 11, 1955, and that the said order is a present, valid, subsisting and final order; denies that the said order was made and entered for the Officer in Charge of the Los Angeles Office of the United States Immigration and Naturalization Service, and alleges that this order was the order of the Special Inquiry Officer.

III.

Answering Paragraph VIII of the Complaint, defendant admits that plaintiff will be taken into custody for deportation upon the warrant of deportation issued pursuant to the order of deportation; denies each and every allegation other than those admitted and in the said paragraph contained. Defendant alleges that at the time the Complaint herein was filed, it was intended to deport the plaintiff from the United States pursuant to law, but that no action will be taken to effect the deportation of plaintiff until the present judicial proceeding is terminated.

IV.

Answering Paragraph IX of the Complaint, defendant admits the plaintiff entered the United States at San Ysidro, California, on or about November 25, 1953; admits that the plaintiff has remained within the United States since that date.

V.

Answering Paragraphs X and XI of the Complaint, defendant neither admits nor denies the allegations therein contained on the ground that said allegations contain irrelevant and immaterial matter.

VI.

Admits the allegations in Paragraph XII of the Complaint.

VII.

Answering Paragraph XIII of the Complaint, defendant denies each and every allegation in said paragraph contained; and alleges that an order of

deportation was entered on March 11, 1955, after an administrative hearing on February 24, 1955.

VIII.

Answering Paragraphs XIV, XV, and XVI of the Complaint, defendant denies each and every allegation in each of said paragraphs.

For a further, separate and first affirmative defense to the complaint, the defendant alleges:

I.

The plaintiff herein has been accorded a full and fair hearing in conformity with law to determine his right to be and remain in the United States. There will be offered in evidence when this cause comes on for hearing a certified record of the Immigration and Naturalization Service, Department of Justice, relating to the plaintiff herein, containing the complete record of the deportation proceedings before the Immigration and Naturalization Service.

Wherefore, defendant prays for a judgment dismissing said Complaint, denying the relief prayed for therein, and for such other relief as to the Court seems just and proper in the premises.

LAUGHLIN E. WATERS,

United States Attorney

MAX F. DEUTZ,

Assistant U. S. Attorney,

Chief of Civil Division

/s/ ANDREW J. WEISZ,
Assistant U. S. Attorney,
Attorneys for Defendant

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 16, 1956.

[Title of District Court and Cause.]

STIPULATION SUBSTITUTING ALBERT
DEL GUERCIO AS DEFENDANT IN
PLACE AND STEAD OF GORDON COR-
NELL

It is hereby stipulated, by and between the parties, through their respective attorneys of record, that Albert Del Guercio, as District Director of the Immigration and Naturalization Service at Los Angeles, California, be and he is hereby substituted as defendant in the above entitled action in the place and stead of Gordon Cornell.

Dated: October 22nd, 1956.

/s/ JOHN P. TOBIN,
Attorney for Plaintiff
LAUGHLIN E. WATERS,
United States Attorney
MAX F. DEUTZ and
ARLINE MARTIN,
Assistant U. S. Attorneys
/s/ ARLINE MARTIN
Attorneys for Defendant

It is so ordered this 22nd day of October, 1956.

/s/ WM. M. BRYNE,

United States District Judge

[Endorsed]: Filed October 22, 1956.

[Title of District Court and Cause.]

PLAINTIFF'S PROPOSED PRE-TRIAL
ORDER

At a conference held under Rule 16, F.R.C.P., by direction of Wm. M. Bryne, Judge, the following admissions and agreements of fact were made by the parties and require no proof:

(1) It is stipulated that the plaintiff is a native and citizen of Mexico. He last entered the United States about November 25, 1953. He entered the United States without inspection.

(2) That voluntary departure was denied although requested; that it was determined in the decision that plaintiff was statutorily eligible for the granting of the relief.

Issues of Law to Be Determined

(1) Did plaintiff have a fair hearing?

(2) Was the denial of voluntary departure an abuse of discretion.

The foregoing admissions of fact have been made by the parties in open court at the pre-trial conference; and issues of fact and law being thereupon

stated and agreed to, the Court makes this Order which shall govern the course of the trial unless modified to prevent manifest injustice.

Dated: October 22, 1956.

/s/ WM. M. BRYNE,
Judge of the U. S. District Court.

The foregoing pre-trial Order is hereby approved:

/s/ JOHN P. TOBIN,
Attorney for Plaintiff

LAUGHLIN E. WATERS,
U. S. Attorney

/s/ By ARLINE MARTIN
Attorneys for Defendants

[Endorsed]: Filed October 22, 1956.

In the United States District Court for the Southern District of California, Central Division

Civil No. 19655-WB

VICTOR MANUEL GIL, Plaintiff,

vs.

ALBERT DEL GUERCIO, et al.,
Defendants.

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND JUDGMENT

The above-entitled cause having come on for trial

on November 5, 1956, at 2 p.m., before the Honorable William M. Bryne, District Judge Presiding, plaintiff being represented by his attorney, John P. Tobin, and the defendant being represented by his attorneys, Laughlin E. Waters, United States Attorney, Max F. Deutz and Arline Martin, Assistant United States Attorneys, and the Court having received in evidence a certified record of the Immigration and Naturalization Service relating to the deportation proceedings as to the plaintiff, and the Court having heard the arguments of counsel, and having taken the within cause under submission, and being fully advised in the premises, now makes its Findings of Fact, Conclusions of Law, and Judgment.

Findings of Fact

I.

Plaintiff is an alien, a native and citizen of Mexico. He last entered the United States on or about November 25, 1953, near San Ysidro, California, without inspection by the Immigration and Naturalization Service. Prior thereto, and on or about November 21, 1953, the plaintiff, under order of deportation, had been granted voluntary departure from the United States and had voluntarily departed to Mexico.

II.

On January 25, 1955, a warrant of arrest in deportation was issued by the Immigration and Naturalization Service, Los Angeles, California, charging that the plaintiff was subject to deportation

under the provisions of Section 1251(a)(2) of Title 8 of the United States Code, Section 241(a)(2) of the Immigration and Nationality Act, in that he had entered the United States without inspection.

III.

Pursuant to the aforesaid warrant of arrest, a deportation hearing was held and a decision rendered that plaintiff was subject to deportation and that plaintiff was statutorily eligible for voluntary departure, but denying said voluntary departure. No appeal was ever taken from said order of deportation and said order of deportation became final.

Conclusions of Law

I.

This Court has jurisdiction of the within cause under the provisions of the Administrative Procedures Act, 5 U.S.C.A. 1009 et seq.

II.

The deportation proceedings relating to plaintiff were fair, in accordance with law, and did not violate any of the plaintiff's constitutional rights, and there was due process and a fair hearing.

III.

There was no abuse of discretion in defendant's denial of voluntary departure to the plaintiff.

IV.

The order of deportation outstanding against the plaintiff is valid and plaintiff is deportable pursuant to said order.

V.

Judgment should be entered in favor of the defendant and against plaintiff, denying the relief prayed for in the complaint for judicial review, for declaratory judgment and injunction on file herein, and awarding the defendant his costs.

VI.

The defendant Albert Del Guercio, substituted herein in place and stead of Gordon L. Cornell, is the proper party defendant in the action and, there being no parties substituted for the John Does joined as defendants should be dismissed from the action.

Judgment

In accordance with the foregoing Findings of Fact, and Conclusions of Law, It Is Ordered, Adjudged and Decreed:

1. That judgment is hereby entered in favor of the defendant and against the plaintiff; that the order of deportation outstanding against the plaintiff is valid and plaintiff is deportable pursuant to said order.

2. The relief prayed for in the complaint for declaratory relief and injunction shall be and the same is hereby denied; and the John Doe defendants are hereby dismissed from the action.

3. The defendant shall have his costs incurred herein in the amount of \$20.00.

Dated: November 23, 1956.

/s/ WM. M. BRYNE,
United States District Judge

Affidavit of Service by Mail attached.

[Endorsed]: Lodged November 13, 1956. Docketed and Entered November 26, 1956, and Filed November 23, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Victor Manuel Gil, plaintiff in the above-described action, appeals to the United States Court of Appeals for the Ninth Circuit from:

1. The Judgment made and signed on November 26, 1956, and the whole thereof.
2. Denial of relief prayed for in the complaint for declaratory relief and injunction.

Dated at Los Angeles, California this 3rd day of December, 1956.

/s/ JOHN P. TOBIN,
Attorney for Plaintiff

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 3, 1956.

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

Briefly stated, the points of appeal are:

1. The administrative ruling denying voluntary departure constituted an abuse of discretion; and,
2. Administrative hearing was unfair; and,
3. Judgment of trial court is contrary to law.

/s/ JOHN P. TOBIN,
Attorney for Plaintiff

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 12, 1956.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

Plaintiff, who heretofore has filed his Notice of Appeal, does hereby make the following designation of contents of record on said appeal:

1. Complaint for Declaratory Judgment and Injunction;
2. Answer of defendant;
3. Order denying preliminary injunction, etc.;
4. Stipulation substituting Albert Del Guercio, etc.;

5. Pre-trial Order;

6. Findings of Fact, Conclusions of Law and Judgment; and,

7. Notice of Appeal, etc.

Dated: December 11, 1956.

/s/ JOHN P. TOBIN,

Attorney for Plaintiff-Appellant

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 12, 1956.

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled cause:

A. The foregoing pages numbered 1 to 27, inclusive, containing the original

Complaint;

Order Denying Preliminary Injunction and Discharging Order to Show Cause and Temporary Restraining Order;

Answer;

Stipulation Substituting Albert Del Guercio as Defendant in Place and Stead of Gordon Cornell;

Plaintiff's Proposed Pre-trial Order;

Findings of Fact, Conclusions of Law, and Judgment;

Notice of Appeal to the U. S. Court of Appeals;

Statement of Points on Appeal;

Designation of Contents of Record on Appeal.

I further certify that my fee for preparing the foregoing record, amounting to \$1.60, has been paid by appellant.

Witness my hand and the seal of said District Court, this 10th day of January, 1957.

[Seal] JOHN A. CHILDRESS,
Clerk

/s/ By CHARLES E. JONES,
Deputy

[Title of District Court and Cause.]

SUPPLEMENTAL DESIGNATION OF CON- TENTS OF RECORD ON APPEAL

Plaintiff, who has heretofore filed his designation of contents of record on appeal, hereby makes the following supplemental designation:

1. All original exhibits.

Dated: January 18, 1957.

JOHN P. TOBIN,
Attorney for Plaintiff

[Endorsed]: Filed January 25, 1957.

[Endorsed]: No. 15416. United States Court of Appeals for the Ninth Circuit. Victor Manuel Gil, Appellant, vs. Albert Del Guercio, as District Director of the Immigration and Naturalization Service at Los Angeles, California, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: January 11, 1957.

Docketed: January 22, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15416

VICTOR MANUEL GIL, Appellant,

vs.

ALBERT DEL GUERCIO, Respondent.

STATEMENT OF POINTS ON APPEAL AND
DESIGNATION OF RECORD

The appellant hereby adopts the statement and designation, including the supplemental designation of contents of record, appearing in the typewritten record.

Dated: January 21, 1957.

/s/ JOHN P. TOBIN,
Attorney for Appellant

[Endorsed]: Filed January 22, 1957. Paul P.
O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

STIPULATION THAT EXHIBITS MAY BE
CONSIDERED IN THEIR ORIGINAL
FORM

It is hereby stipulated by and between the above
named parties through their respective counsel of
record that the exhibits may be considered in their
original form without the necessity of reproducing
them in the printed record.

Dated: January 25, 1957.

/s/ JOHN P. TOBIN,
Attorney for Appellant

LAUGHLIN WATERS,
United States Attorney

/s/ By ARLINE MARTIN,
Assistant United States Atty.

Attorneys for Respondent

[Endorsed]: Filed January 29, 1957. Paul P.
O'Brien, Clerk.

